

REMARKS

Applicant wishes to thank the Examiner for the attention accorded to the instant application, and respectfully requests reconsideration of the application as amended.

Formal Matters

Claims 1-30 are pending in the application. Claim 1 is amended to correct minor errors. Care has been taken to ensure no new matter is being entered.

Specification

In the specification, a minor correction is made to the paragraph on page 5, beginning on line 21. No new matter has been added.

Double Patenting

In the outstanding Office Action, the Examiner has rejected claims 1, 3-5, 7, 9-15, 17-19, 21 and 23-30 on the grounds of non-statutory obviousness-type double patenting over claims 1-4, 6, 10, and 12-16 of U.S. Patent No. 7,257,408. The Examiner alleges that the conflicting claims are not patentably distinct from the claimed invention.

Applicant respectfully traverses. Applicant is of the view that submitting a terminal disclaimer would be premature and unnecessary at this point, because the conflicting claims have not in fact been patented. Applicant will consider submitting a terminal disclaimer upon an indication of allowance of the pending claims.

Rejection of Claims Under 35 U.S.C. §103

Claims 1-5, 7, 9-19, 21, and 23-30 are rejected under 35 U.S.C. § 103(a) as unpatentable over applicant's admitted prior art (hereinafter "AAPA") in view of Hanaoka et al., U.S. Patent Application Publication No. 2003/0156659 (hereinafter "Aldis"). This rejection should be withdrawn based on the comments and remarks herein.

Among the problems recognized and solved by the present invention is the need to maximize throughput of a wireless communication system and satisfy target communication quality in accordance with reception quality. Applicant's inventive solution recognizes that if the data is transmitted in the optimum mode, then the data transmission rate becomes the highest in the transmission modes due to the selection of the modulating system and the encoding rate, e.g., modulating/ encoding mode, that can satisfy the target communication quality in accordance with the reception quality. The inventive solution comprises a threshold value control unit that can select the modulating/encoding mode to optimally set the threshold value, even if the propagation value is changed.

The Examiner contends that it would have been obvious to have a table selector or a device to select the table shown in Figs. 6A-6C. Applicant respectfully disagrees. First, Figs. 6A-6C are not tables; each Figure is a graph of reception quality vs. time, in which modulating/encoding modes and/or changes in these modes are illustrated. Second, even if, *inter alia*, the Figures depicted tables, the Examiner provides no reason why a device to select one of the tables shown in these Figures is obvious. Applicant respectfully requests that the Examiner provide a reason for his statement.

Withdrawal of this rejection is respectfully requested.

Allowable Subject Matter

Applicant appreciates that claims 6, 8, 20 and 22 are objected to as being dependent upon a rejected base claim, and would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As discussed above, applicant submits that the base claims are allowable so that the objected to claims should also be allowable without being rewritten in independent form.

Conclusion

For at least the reasons set forth in the foregoing discussion, Applicant believes that the Application is now allowable, and respectfully requests that the Examiner reconsider the rejection and allow the Application. Should the Examiner have any questions regarding this Amendment, or regarding the Application generally, the Examiner is invited to telephone the undersigned attorney.

Respectfully submitted,



Katherine R. Vieyra
Registration No. 47,155

Scully, Scott, Murphy & Presser, P.C.
400 Garden City Plaza, Suite 300
Garden City, New York 11530
(516) 742-4343

KRV:av